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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 TIMOTHY BRYAN BROOKS,

11 Petitioner,

No. CIV S 03-1860 FCD EFB P

12 vs.

13 KATHY PROSPER, et al.,

14 Respondents.

ORDER

15 _____/
16 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of
17 this court's September 12, 2006, denial of his application for a writ of habeas corpus. Before
18 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);
19 Fed. R. App. P. 22(b).

20 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
21 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
22 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues
23 satisfy the required showing or must state the reasons why such a certificate should not issue.
24 Fed. R. App. P. 22(b).


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1 For the reasons set forth in the magistrate judge's July 27, 2006, findings and
2 recommendations, petitioner has not made a substantial showing of the denial of a constitutional
3 right. Accordingly, a certificate of appealability should not issue in this action.

4 IT IS SO ORDERED.

5 DATED: November 15, 2006

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9 FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE